IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.1464 of 2005
Date of decision: January 29, 2007.

Bhajan Singh

...**Petitioner(s)**

v.

M/s B.S. Mechanial Works & Anr.

...**Respondent(s)**

Present: Shri Mahesh Gupta, Advocate for the petitioner.

None for the respondent.

Surya Kant, J. (Oral)

As per the Office report, service is complete, however, no one appears on behalf of the respondents.

This Criminal Revision petition is directed against the order dated 28.2.2005 passed by the learned Chief Judicial Magistrate, Sangrur whereby a criminal complaint filed by the petitioner under section 138 of the Negotiable Instruments Act, read with Section 420 IPC, has been dismissed in default.

The petitioner filed the above stated complaint on 13.2.2004, *inter-alia,* alleging that a cheque in the sum of Rs.50,000/- was issued by the respondent-concern to discharge its debt liability. However, upon presentation, the same was dishonoured by the Bank with the report that the account was closed. While the case was fixed for recording of the pre-summoning evidence, it is averred that the petitioner had wrongly noted the date as 28.3.2005 instead of 28.2.2005. Consequently, the petitioner could not appear on 28.2.2005 when the said complaint was dismissed in default.

In support of the stand taken by him that he had wrongly noted the date as 28.3.2005, the petitioner has filed his affidavit.

Since the stand taken by the petitioner has remained uncontroverted and possibility of an inadvertent mistake while noting the

date of hearing cannot be ruled out, this petition is allowed; the impugned order dated 28.2.2005 passed by the learned Chief Judicial Magistrate, Sangrur is set aside and the complaint filed by the petitioner is restored to its original number and file and the petitioner is directed to appear before the learned Chief Judicial Magistrate on 15.2.2007.

The Registry is directed to disburse the cost of Rs.2,000/- deposited by the petitioner in compliance to the order dated 5.12.2005 to the Punjab Legal Services Authority within two weeks.

January 29, 2007. [**Surya Kant**]
kadyan **Judge**